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OFFICE OF PETITIONS

In re Application of :  
Masaru Seita et al :  
Application No. 10/034,775 : DECISION GRANTING PETITION  
Filed: December 27, 2001 :  
Attorney Docket No. 51344 :

This is a decision on the petition under 37 CFR 1.10(d) filed July 23, 2002, requesting that the above-identified application be accorded a filing date of December 27, 2001, rather than the presently accorded filing date of January 3, 2002.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail on December 27, 2001, prior to the last scheduled pickup for that day pursuant to the requirements of 37 CFR 1.10. In support, applicants submitted, inter alia:

- a declaration of Deanna M. Rivernide, an assistant to John J. Piskorski of Shipley Company, L.L.C. and Peter F. Corless of Edwards & Angell LLP.
- a "true" copy of the original transmittal letter, bearing the appropriate Express Mail label No. ET755553881US; and
- a "true" copy of the relevant page of petitioner's "Express Mail Deposit Log," with the following headings: Date, Time of Deposit, Post Office, Last Pick-Up Time, Docket No., Express Mail Label No., Date and Time of entry into Mail Log book; and Initials of Depositor.

Preliminarily, it is concluded that the petition was filed promptly while petitioner prepared a reply to the Notice to Filing Missing Parts that the Office had accorded a filing date of January 3, 2002. The evidence of record shows that the number of the "Express Mail" mailing label, ET755553881US, is on the correspondence of record presently accorded a filing date of

January 3, 2002, and thus, was placed on the correspondence prior to the original mailing.

Finally, the "Express Mail Logbook" is very persuasive, it does include an entry that establishes that the log entry came into being after and within 1 business day of the 5:10 pm deposit.

In view of the above, the evidence is convincing that the application was deposited as "Express Mail Post Office to Addressee" service prior to the last scheduled pickup of the day.

The petition is granted. The \$130.00 petition fee is being credited to counsel's deposit account.

The application is being returned to the Office of Initial Patent Examination to await petitioners response to the Notice mailed February 7, 2002 and for correction of the filing date to December 27, 2001.

Telephone inquiries specific to this matter should be directed to Wan Laymon at (703) 306-5685.



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